

DAVID T. MALOOF (DM 3350)
 THOMAS M. EAGAN (TE 1713)
 MALOOF BROWNE & EAGAN LLC
 411 Theodore Fremd Avenue, Suite 190
 Rye, New York 10580-1411
 (914) 921-1200
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

----- X	
SOMPO JAPAN INSURANCE, INC. and	:
SOMPO JAPAN INSURANCE COMPANY OF	:
AMERICA	:
	:
<i>Plaintiffs,</i>	:
- against -	:
	:
NORFOLK SOUTHERN RAILWAY	:
COMPANY, NORFOLK SOUTHERN	:
CORPORATION and THE KANSAS CITY	:
RAILWAY COMPANY	:
	:
<i>Defendants.</i>	:
----- X	

07 Civ. 2735 (DC)

**DECLARATION OF
 CANON U.S.A., INC.
PURSUANT TO FRE 902(12)**

Atsuo Sudo hereby declares:

1. I am the Vice President and General Manager of the Logistics Division of Canon U.S.A., Inc. ("Canon USA"), located in Lake Success, New York. My duties at Canon USA include supervising the handling of shipments from Canon Finetech Industries in China and Canon Inc. in Japan to Canon USA as well as the distribution of these products in the United States. I have held this position since September 2006. I make this declaration on personal knowledge.

2. Canon USA is in the business, *inter alia*, of importing, selling and distributing of photocopy machines manufactured by other Canon entities such as Canon Finetech. I am familiar with and understand the record preparation and record keeping system of Canon USA with respect

to the importing, selling and distribution of photocopy machines.

3. I attach as Exhibit A a true copy of the Canon "Damage/Missing Report" concerning the damaged copiers from Container NYKU 8214688. This report is prepared when damaged product is received at a Canon facility. It was prepared by an employee of Canon USA with knowledge of details therein (or from information transmitted by other employees with knowledge). It is the regular business practice of Canon USA to prepare these types of documents and to keep them in the course of its regularly conducted business activity of selling and shipping photocopiers. The information on the document includes the invoice number (N-SK-06150170), the Vessel, the quantities of cartons damaged (in this case 139) and type of cargo damaged (9563A001AA – Finisher S.1) and the description of damage ("139 units were damaged and are not repairable. Box's are crushed and parts are hanging out of some of them").

4. I attach as Exhibit B a true copy of Canon's "Damage Report." This is a handwritten version on which Exhibit A is based. It also includes the serial number of damaged machines. This type of document is prepared every time damaged product is received at a Canon facility. It was prepared by an employee of Canon USA with knowledge of details therein (or from information transmitted by other employees with knowledge). It is the regular business practice of Canon USA to prepare these types of documents and to keep them in the course of it's regularly conducted business activity of selling and shipping photocopiers.

5. I attach as Exhibit C a true copy of Canon business records in connection with the disposal/destruction of the damaged machines at issue in this case. Exhibit C-1 is a Certificate of Destruction which we received from our vendor Noranda confirming that the damaged machines were destroyed by them. Exhibit C-2 is the invoice received from Noranda for the destruction. Canon USA integrates these documents into their own records and relies upon them in its

day-to-day operations. Noranda issues these type of documents every time it sheds and destroys damaged copy machines. Canon pays the invoice based on the proven accuracy of the Certificate of Destruction and the invoice. Exhibit C-3 is the straight bill of lading prepared by Canon USA for the transportation of the damaged machines to Noranda. It was prepared by an employee of Canon USA with knowledge of details therein (or from information transmitted by other employees with knowledge). It is the regular business practice of Canon USA to issue these bills of lading when sending damaged goods for destruction and to keep them in the course of it's regularly conducted business activity.

6. I attach as Exhibit D a true and complete copy of Canon Inc.'s "Shipper's Vanning Certificate" (Cargo Loading Into Container) and the Packing List and Invoice from Canon Inc. pertaining to the copiers at issue in this litigation. Canon USA purchased the items from Canon Inc. (which were manufactured by Canon Finetech) in order to fill Canon USA's customers' orders. These documents were received by Canon USA on or about the time of the shipment in the ordinary course of Canon USA's regularly conducted business activity. The documents are utilized by Canon USA in the ordinary course of its regularly conducted business activity. The documents set forth, among other things, the type of items shipped, quantity, price and that the product was properly loaded into the shipping container. Canon USA integrates these documents into their own records and relies upon them in its day-to-day operations. That is, Canon USA issues packing lists and invoices to its own customers based on the proven accuracy of these documents. Canon Inc. issues these types of records every time Canon USA purchases products from them. Canon Inc. has issued tens of thousands of these types of documents to Canon USA. Canon USA has found these records to be extremely accurate and confirm that the quantities and type of the laptops were shipped to us in good order.

7. The Shipment was comprised of two containers—NYKU8214688 and NYKU8232329. Canon USA found all the units shipped in Container NYKU8232329 to be in sound condition and received no complaints from our customers that these units were damaged.

Dated: December 10, 2008
Lake Success, New York

I declare that the foregoing is true and correct under the penalty of perjury under the laws of the United States.



Atsuo Sudo

F://WP-Docs/2503.81/102008 902(12) Decl. Canon USA.doc

ATTN: Dave Konishi.

(CIRCLE ONE) ☐**DAMAGE / MISSING REPORT**

RECEIVING W/H: DC11	CODE: DZ035	REPORT #
RECEIVED DATE: 5/26/2006		
INVOICE/SO: N-SK-06/50170		
CARRIER: CDS Transport		
FREIGHT BILL NO.		

IMPORT	A.W.B# HAWB: CONTAINER NO: KYKU8214688
	VESSEL NAME: OOCL NINGBO

DOMESTIC	(CHECK ONE) <input type="checkbox"/> CBM DOM. VENDOR X W/H TRANSFER OR INTERNAL
	VENDOR NAME OR W/H NAME:

Q'TY.	ITEM NO.	DESCRIPTION	CASE MARK	CASE#	SERIAL NO'S
1	139 9563A001AA	Finisher - S1			sent by separate list
2					
3					
4					
5					
6					
7					
8					
9					

description of each:

1	139 units were damaged and are not repairable. Box's are crushed and parts are hanging out of some of them.
2	
3	
4	
5	
6	

(CHECK ONE) <input type="checkbox"/>	CONFIRMATION FROM TRUCKING CO.	PHOTOGRAPHS YES - X NO
STATUS CHANGE TO :SS# Z		STATUS CHANGE S/O NO. A0006556
SUPERVISOR / CLERK: Mark Brumbach		APPROVAL: Bill Bishop

Please fax delivery receipt with report

EXHIBIT A

CANON

5

TO LAURA
3 PAGES

* asked Laura
to get revised damage
report and confirmed
P/S - Z.

Canon

5625 Oakbrook Pkwy.
Norcross, Ga. 30093
770-849-7790

DAMAGE REPORT

Carrier _____ Freight Bill Number _____
Canon Shipping Order Number _____
Model Number FINISHER 52
Serial Number SEE BILL Bishop for list of SN #
Is Product Repairable? NO

Describe Product Damage

139 UNIT HAVE EXTENSIVE DAMAGE
AND ARE NOT REPAIRABLE

BOX'S ARE CRUSHED AND PARTS ARE HANGING OUT
OF BOX

Inspection by: [Signature]

Date: 5/24/06

EXHIBIT B

9563A001AA- FINISHER S.1 (All THQ Prefix)

THQ -51978	THQ - 51973	THQ - 52094
52057	52059	51972
52073	52072	51980
52041	52040	52060
52074	52024	52003
52077	52030	52036
52014	52029	52048
51987	51993	52047
52022	52062	52002
52027	52058	52103
52105	52016	52012
52039	52042	52065
52017	52050	52005
52089	52001	51992
51982	52076	51976
51981	52053	52053
52045	52071	52028
51997	52082	52031
51996	51989	51990
52117	52095	52020
52087	52104	52116
52107	52035	52106
52021	51991	52059
51985	51986	52018
51970	52033	52078
52088	51974	52063
52108	52066	52034
52110	52079	52083
52141	52096	52097
52139	52069	51971
52140	52032	52046
52142	52008	52012
52109	52115	52013
52061	52051	52049
52085	52080	52064
52043	52093	51994
52090	52037	52044
52038	52075	51979
52006	52084	52092
51998	51975	51977
52067	52068	52007
52004	52070	52118

CANON

06/05/06

MON 15:29 [TX/RX NO 6921] 002

9563A001AA-FINISHER S.1 (All THQ Prefix)

THQ - 52099	THQ-52026	THQ-52011
52025	52056	52100
52055	52101	52054
51988	52019	52015
52081		

03/27/2008 THU 22:57 FAX

003/005



noranda

Certificate of Destruction

M283
 PATTY BRANTELY
 CANON U.S.A., INC.
 5625 OAKBROOK PARKWAY
 NORCROSS GA 30093

Wednesday, April 4, 2007

This is to certify that all electronic scrap material included in the shipment(s) listed below has been processed at our shredding facility located at 8855 Washington Blvd., Roseville, California or 417 Sanford Road, La Vergne, Tennessee.

Source Customer Code:	Shipped From:	BOL Weight:	Date:
M283	CANON USA	4,820	3/13/2007
Shipment ID:	5625 OAKBROOK PKWY	Gross Weight Received: 4,890	BOL#: 5311
248274	NORCROSS GA30093	Overage/Shortage (lb): -70	Trailer #: 5311
Customer Reference		Net Weight Received: 4,240	Seal #:

Processing Location:
 Nashville

Source Customer Code:	Shipped From:	BOL Weight:	Date:
M283	CANON USA	11,055	3/13/2007
Shipment ID:	5625 OAKBROOK PKWY	Gross Weight Received: 10,900	BOL#: 2-28-07 5308
248279	NORCROSS GA30093	Overage/Shortage (lb): 155	Trailer #: 5309
Customer Reference		Net Weight Received: 9,836	Seal #: 1804199

Processing Location:
 Nashville

Processing to shred and separate the material into recyclable product streams completely destroys the received hardware. CRTs and hazardous materials removed from equipment are recycled or properly disposed of through NRI's approved vendors.

Note: Received weights are subject to tare weight verification.

Scott Sodenkamp - Operations Manager
 Noranda Recycling Inc.

PAID
 4-13-07

1595 Monterey Hwy., San Jose, CA 95112
 8355 Washington Blvd., Roseville, CA 95678
 417 Sanford Road, La Vergne, TN 37086

EXHIBIT C-1

03/27/2008 THU 22:57 FAX

0002/005



Attn: PATTY BRANTELY
 Bill to: CANON U.S.A., INC.
 5625 OAKBROOK PARKWAY
 NORCROSS GA 30093

Invoice #: 52307
 PO#:
 Invoice Date: 4/4/2007
 Terms Net 30 Due: 5/4/2007
 SCD: M283

Quantity	Unit	Description	Weight	Rate	Amount
		Electronic Recycling			
4,240	Lbs.	Electronic Equipment	246274	\$0.18	\$763.20
9,836	Lbs.	Electronic Equipment	246279	\$0.18	\$1,770.48
14,076	Total Lbs.			Total	\$2,533.68

Originator: _____

Approved
by: _____

PAID
 4-13-07

Remit Payment to: Noranda Recycling Inc.
 1685 Monterey Highway
 San Jose, CA 95112
 (408)998-4930

Please reference Invoice # 52307 on any payment and/or correspondence.

EXHIBIT C-2

Canon

PAGE
REFERENCE
ISSUED1
SK-06/50170
MAR.27,2006
11:37:42SHIPPER'S VANNING CERTIFICATE
(CARGO LOADING INTO CONTAINER)

SHIPPER (E4004)	CANON FINETECH INDUSTRIES DEVELOPMENT CO., LTD.	
CONSIGNEE (E6184)	CANON U.S.A. INC. LOS ANGELES OFFICE (DIVERSION)	
VESSEL(VOYAGE NO.)	OOCL NINGBO	(V.1)
DATE OF SAILING	MARCH 26,2006	
PORT OF SHIPMENT	YANTIAN	CHINA
PLACE OF DELIVERY	LOS ANGELES	U.S.A.

THIS IS TO CERTIFY THAT THE UNDERMENTIONED CARGO WAS STOWED IN THE CONTAINER(S)
IN OUR ATTENDANCE AND THE DOORS OF THE CONTAINER(S) WERE SEALED BY US.

1. PARTICULAR OF CARGO

CONTAINER NO.	P/O NO.	SEAL NO.	COMMODITY	NO.OF P'XGS	POSITION
---------------	---------	----------	-----------	-------------	----------

AS PER ATTACHED SHEET

TOTAL	120 PACKAGE(S) IN	2 CONTAINER(S)
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CONTAINER NO.	P/O NO.	SEAL NO.	CONTAINER TYPE
NYKU8214688	FAULV73-01	CN4652980	40FTDRY
NYKU8223329	FAULV73-02	CN4652979	40FTDRY

2. STOWAGE PROPEREXHIBIT D

CANON

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PAGE
REFERENCE SK-06/50170²

-SHIPPER'S CERTIFICATE ATTACHED SHEET-

CONTAINER NO.	P/O NO.	SEAL NO.	COMMODITY	NO. OF P'KGS	POSITION
NYKU8214688	FAULV73-01	CN4652980	9563A001AA FINISHER-S1	60 PALLET(PAPER)	FRONT
NYKU8223329	FAULV73-02	CN4652979	9563A001AA FINISHER-S1	60 PALLET(PAPER)	FRONT

CANON

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Canon
LOGISTICS HEADQUARTERS

INVOICE

CANON INC.
30-8 SHINJUKU 3-CHOME
CHITARA, TOKYO 145, JAPAN
PHONE: 81-3-3756-8111

F		INVOICE NO. SK-06/50170		ISSUING DATE MAR.28,2006		PAGE 1
BUYER (E6001)		CANON U.S.A. INC. HEAD OFFICE ONE CANON PLAZA LAKE SUCCESS, L.I., N.Y. 11042 U.S.A.		CASE MARK		
CONSIGNEE (E6184)		CANON U.S.A. INC. LOS ANGELES OFFICE (DIVERSION) 15955 ALTON PARKWAY IRVINE, CA 92618 U.S.A.		- AS PER ATTACHED SHEET -		
SHIPMENT PER OOCL NINGBO (VOY.NO.17E12)		CARRIER (NYK)	ON/ABOUT MARCH 26,2006	TOTAL PACKAGES (120) PACKAGES		
FROM YANTIAN CHINA		VIA(1) SHENZHEN VIA(2)		TOTAL G/W(KGS) 9,120.0		
TO LOS ANGELES U.S.A.		E.T.A APRIL 7,2006		TOTAL M'MENT(M3) 107.792		
TERMS OF PAYMENT D/A DUE ON JULY 01 2006				SHIPPING METHOD OCEAN		
				FOB YANTIAN		
ITEM	PRODUCT CODE	COMMODITY	ORIGIN	QUANTITY	UNIT PRICE	AMOUNT IN US DOLLAR

CANON PRODUCTS

--- DETAILS AS PER ATTACHED SHEET ---

480UNITS

FOB	YANTIAN	USD215,380.80
INSURANCE		USD120.91
TOTAL		USD215,501.71

"RESPONSIBLE EMPLOYEE OF THE EXPORTER:
ATSUO SUDO, S.G.M. OF LOGISTICS OPS. CENTER
"SHIPPER'S DECLARATION: THIS SHIPMENT DOES NOT
* CONTAIN SOLID WOOD PACKING MATERIAL

EXHIBIT

CANON INC.

- E. & O. E. -

MANAGER, LOGISTICS HEADQUARTERS

CANON

== INVOICE ATTACHED SHEET ==				INVOICE NO. SK-06/50170	ISSUING DATE MAR.28,2006	PAGE 2
ITEM	PRODUCT CODE	COMMODITY	ORIGIN	QUANTITY	UNIT PRICE	AMOUNT IN US. DOLLAR
FAULV73 **0/NO.				FOB YANTIAN		
0001	9563A001AA	FINISHER-S1 FOR CANON DIGITAL COPIER IR 2270/2870/3570/4570	CN	240UNITS	@448.71	107,690.40
0002	9563A001AA	FINISHER-S1 FOR CANON DIGITAL COPIER IR 2270/2870/3570/4570	CN	240UNITS	@448.71	107,690.40
				480UNITS		USD215,380.80

THE 2-CHARACTER CODE INDICATED UNDER THE "ORIGIN" IS
IN ACCORDANCE WITH "COUNTRY CODE" STANDARDIZED BY ISO 3166.
IT DECODES:
"CN"=CHINA

== CASE MARK ATTACHED SHEET ==

INVOICE NO.	ISSUING DATE	MAR.28,2006	PAGE
SK-06/50170	INVOICE DATE	MAR.26,2006	1

O/ FAULV73-01
CASE NO. 1- 60

C.U.S.A.
LOS ANGELES (D)

MADE IN CHINA

O/ FAULV73-02
CASE NO. 1- 60

C.U.S.A.
LOS ANGELES (D)

MADE IN CHINA

Canon
LOGISTICS HEADQUARTERS

ACKING LIST

CANON INC.
30-2, SHIMOMARUO 3-CHOME,
DITA-KU, TOKYO 146, JAPAN
PHONE: 81-3-5362-8111

F:				INVOICE NO. SK-06/50170	ISSUING DATE MAR.26,2006	PAGE 1
BUYER (E6001) CANON U.S.A. INC. HEAD OFFICE ONE CANON PLAZA LAKE SUCCESS, L.I., N.Y. 11042 U.S.A.				CASE MARK		
CONSIGNEE (E6184) CANON U.S.A. INC. LOS ANGELES OFFICE (DIVERSION) 15955 ALTON PARKWAY IRVINE, CA 92618 U.S.A.				- AS PER ATTACHED SHEET -		
SHIPMENT PER OOCL NINGBO (VOY.NO.17E12)		CARRIER (NYK)	ON/ABOUT MARCH	26,2006	TOTAL PACKAGES (120) PACKAGES	
FROM YANTIAN CHINA		VIA(1) VIA(2)	SHENZHEN		TOTAL G/W(KGS) 9,120.0	
TO LOS ANGELES U.S.A.		E.T.A. APRIL	7,2006		TOTAL M'MENT(M3) 107.792	
SHIPPING METHOD OCEAN						
MARKS & NOS. (KIND OF PACKAGE)	COMMODITY	ORIGIN	QUANTITY	NET WEIGHT (KGS)	G.WEIGHT (KGS)	M'MENT (M3)

CANON PRODUCTS

--- DETAILS AS PER ATTACHED SHEET ---

480UNITS	6,288.0000	9,120.0	107.792
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CANON INC.

- E. & O. E. -

MANAGER, LOGISTICS HEADQUARTERS

CANON

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== PACKING LIST ATTACHED SHEET ==				INVOICE NO.	ISSUING DATE	MAR. 28, 2006	PAGE
				SK-06/50170	INVOICE DATE	MAR. 26, 2006	2
MARKS & NOS. (KIND OF PACKAGE)	COMMODITY	ORIGIN	QUANTITY	NET WEIGHT (KGS)	G. WEIGHT (KGS)	M. WEIGHT (KGS)	
O/ FAULV73-01 CASE NO. 1- 60 P/T(PAPER) 1- 60 0001 9563A001AA FINISHER-S1 FOR CANON DIGITAL COPIER IR 2270/2870/3570/4570	**0/NO.						
		CN	240UNITS (#4)	3,144.0000 (#13.1000)	4,560.0 (#76.0)	53.896 (#0.898265)	
O/ FAULV73-02 CASE NO. 1- 60 P/T(PAPER) 1- 60 0002 9563A001AA FINISHER-S1 FOR CANON DIGITAL COPIER IR 2270/2870/3570/4570	**0/NO.						
		CN	240UNITS (#4)	3,144.0000 (#13.1000)	4,560.0 (#76.0)	53.896 (#0.898265)	
			480UNITS	6,288.0000	9,120.0	107.792	

THE 2-CHARACTER CODE INDICATED UNDER THE "ORIGIN" IS
IN ACCORDANCE WITH "COUNTRY CODE" STANDARDIZED BY ISO 3166.
IT DECODES:
CN=CHINA

== CASE MARK ATTACHED SHEET ==

INVOICE NO.	ISSUING DATE	MAR.28,2006	PAGE
SX-08/50170	INVOICE DATE	MAR.28,2006	1

O/ FAULV73-01
CASE NO. 1- 60

C.U.S.A.
LOS ANGELES (D)

MADE IN CHINA

O/ FAULV73-02
CASE NO. 1- 60

C.U.S.A.
LOS ANGELES (D)

MADE IN CHINA